IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 2300 OF 1992
WITH
CIVIL WRIT PETITION NO. 4828 OF 1993

CIVIL WRIT PETITION NO. 2300 OF 1992

Ashok Yedu Kale
R/at Dr. Ambedkar Nagar,
Room No. 103-G, Senapati
Bapat Marg, behind Kamgar
Nagar Krida Kendra, Bombay ..Petitioners
Vs
1. The Municipal Corporation of Greater Bombay.
2. Maruti Satba Kamble
R/at Masrang,Tal. Budargadh
Dist. Kolhapur
3. Shantaram Kuse Chavan
R/at Dr. Ambedkar Nagar
Room No.G-104 (4651), Senapati
Bapat Marg, Bombay-13. ..Respondents.

CIVIL WRIT PETITION NO. 4828 OF 1993.

Shantaram Kuse Chavan
R/at Dr. Ambedkar Nagar
Room No.G-104 (4651), Senapati
Bapat Marg, Bombay-13. ..Petitioner.
V/s

1. The Municipal Corporation of Greater Bombay.

2. Maruti Satba Kamble
R/at Masrang,Tal. Budargadh
Dist. Kolhapur

3. Ashok Yedu Kale
R/ at Dr. Ambedkar Nagar,
Room No. 103-G, Senapati
Bapat Marg, behind Kamgar

Nagar Krida Kendra, Bombay ..Respondents.

Mr. P.D. Pise h/f Mrs. A.R.S. Baxi for the petitioner in W.P.No.2300/1992
Mr. P.D. Pise h/f for Mrs. A.R.S. Baxi for respondent no.3 in W.P. No.4828/1993.

CORAM : D.G.DESHPANDE, J.

DATE : 13TH SEPTEMBER, 2006.

P.C.

. Heard Mr. Pise, Advocate h/f Mrs. A.R.S. Baxi, Advocate for the petitioner in W.P. No. 2300/1992 and for respondent No.3 in W.P. No. 4828/1993. Nobody is present for the B.M.C. Bombay. Nobody is present for the petitioner in Writ Petition No. 4828/1993.

2. Actually the other petition i.e. W.P.No. 4828/1993 can be dismissed in default in the absence of advocate for the petitioner. However, as this petition arise out of a common order passed by the Principal Judge,City Civil Court, Bombay on 24th March, 1992 in two appeals filed by Ashok and Shantaram respectively against the Municipal Corporation of Greater Bombay, this order in both petitions.

3. The facts give rise to the appeal before the

City Civil Court were as under:-

. Certain premises viz. House No. A 465/1/2' X 10' situate at B.A. Nagar, Senapati Bapat Marg, Bombay. The said premises were allotted to one Maruti by the B.M.C. under Slum Clearance Scheme and Pitch holder card was issued to said Maruti on 4th January, 1976. This allotment was subject to certain terms and conditions that the pitch card should not be sold out or given in possession of others and it should not be divided and sublet to others.

4. In July 1989, the B.M.C. has conducted inspection in respect of the said premises and found that Maruti was not occupying the premises but these two petitioners Ashok and Shanatram were occupying. Notices were therefore, served upon all three viz.Ashok, Shantram and Maruti. Maruti did not appear and Shantaram and Ashok appeared and claimed certain lands in the said property. So far as Ahsok is concerned, his advocate pointed out that according to the petitioner Ashok, premises were originally belonging to one Vishnu and Vishnu has written a letter to B.M.C. to transfer the premises in the name of Ashok and therefore, Ashok

claims through Vishnu. So far as Shantaram is concerned, before the City Civil Court it was contended by him, that Maruti by affidavit dated 27th September, 1985 had given the premises to him. Both Ashok and Shantaram also raise certain other pleas but all of them were rejected by the City Civil Court and that the action of the Corporation was upheld. The appeals were dismissed and therefore, these two petitions.

5. Advocate for Ashok urged that as per Exh. "A" of his petition No. 3200/1992 Vishnu has written a letter to the Officers of the B.M.C. for change of rent bill and photopass in the name of Ashok. he contended that while matter was pending before the City Civil Court, Advocate for Ashok had given a notice to the Advocate for the Corporation to produce the documents. The documents were never produced. Subsequently, for the non production of the document, it was necessary for the City Civil Court to draw the adverse inference against the Corporation.

6. It is true that the lower Court has observed that the Corporation in spite of notice to produce the documents did not produce certain documents but the

crucial question is whether drawing adverse inference against the Corporation to the extent of declaring Vishnu as pitch card holder, in the absence of any document being produced by the pensioner Ashok is between B.M.C. and said Vishnu. Exh. "A" is a letter written by Vishnu to the Corporation wherein Vishnu asserted that the Corporation has given him room No.103G and has also issued to him photopas, if ownership of property can be transferred by such letters, then it will be very easy for any one to claim property from Corporation or even Government property. One claiming ownership of property as being a allottee of the Corporation or State Government and then trying to take advantage of the fact that the State Government could not produces documents as required by him and the petitioner Ashok is harping this document, he should have produced the same document of allotment of the Hut No. 103G allotted by Corporation to Vishnu. No particulars regarding year, month and date of allotment, no number of pitch card or no number of photopass is mentioned in Exh."A". This letter therefore, is nothing but a document as contemplated by Section 17 of Evidence Act. It is an admission in favour of person making it and therefore it is inadmissible and even if it is

accepted that Vishnu had written such a letter to the Corporation and Corporation did not produce the necessary documents, no adverse inference can be drawn against the Corporation particularly regarding the grant of pitch card in favour of Vishnu. The contention of Ashok is also required to be rejected on the second ground viz. action that is sought by the Municipal Council because these two petitioners is in respect of hut No. 465/1/2. The action sought to be taken by the Corporation against Ashok and Shantaram is in respect of House No.465/1/2, whereas Vishnu is asserting that he was allottee of Hut No. 103G.

7. There is nothing on record brought by the petitioners and particularly Ashok to show that the hut No. 465/1/2 and hut No. 103G are one and the same. From the numbers given by the Corporation both these huts are different. Burden is heavy upon Ashok to show both these huts numbers referred to one and the same hut. He has totally failed to discharge burden. The trial Court also noted that Advocate for Ashok was asked whether he has with him any document executed by Vishnu or document in possession of Vishnu showing his concern or right in respect of the property hut No. 465/1/2.

But the defendant Corporation’s inability to produce any documents, it is therefore clear that both the petitioners have no case at all to claim any protection. They are in possession of the Municipal property without any right, title and interest and directing any transfer of provisions of pitch holders card and conditions imposed therein. Even if Maruti has transferred his hut in favour of both the petitioners, that is totally and completely illegal and no further protection is therefore, can be given. Mere possession of the petitioner Ashok how so ever long in part of hut No. 465/1/2 does not give him any right. The lower Court rightly dismissed the appeal. No interference is called for. Both the petitions are dismissed. Rule discharged. Stay vacated.

(D.G.DESHPANDE, J.)